

STATE OF MARYLAND  
MILITARY DEPARTMENT  
FIFTH REGIMENT ARMORY  
BALTIMORE, MARYLAND 21201-2288

MDNG-AG-HRO

25 March 2005

MEMORANDUM FOR All Maryland National Guard Management Officials and Current and Former Technicians of the Maryland Army & Air National Guard

SUBJECT: National Guard Technician Employee's Administrative Claim for Annual Leave Restoration Resulting from the Federal Circuit Court Decision in *Butterbaugh v. Department of Justice*.

1. In accordance with OPM Memorandum CPM 2004-19 and NGB Memorandum TN-05-17, the following information and application procedures are provided as background information for your review, consideration, and annual leave restoration claim submission (if applicable) to the Defense Finance and Accounting Service (DFAS) through the Maryland National Guard Human Resources Office, Employee Relations Section.

a. In *Butterbaugh v. DOJ*, the U.S. Court of Appeals for the Federal Circuit ruled that, pursuant to 5 U.S.C. 6323, employees were required to take military leave only on days on which they were required to work, and that agencies should have allowed 15 workdays of military leave for reserve training (instead of 15 calendar days, as the language in this section was previously interpreted and applied prior to the court's ruling). Therefore, **the court ruled that agencies should not have charged military leave for non-workdays that occurred within a period of military duty prior to the change in the military leave law that became effective on December 21, 2000.** On this date, 5 U.S.C. 6323 (a) was amended to include a new paragraph (3), which for the first time allowed employees to take military leave on an hourly basis. Following enactment of this amendment, employees were no longer required to take leave for non-workdays.

b. **Under the Barring Act of 1940 (codified at 31 U.S.C. 3702), a leave claim against the Government must be received within 6 years after the claim accrues and is filed.** Therefore, the Maryland National Guard may accept claims for crediting additional annual leave for military leave charged on non-workdays between the date 6 years prior to the claim filing date and December 21, 2000 (the date of the change in the military leave law). **Example One:** If an employee filed a claim on April 1, 2005, the agency must consider any period of military service between April 1, 1999, and December 21, 2000. **Example Two:** If an



employee files a claim on May 15, 2005, the agency will consider any period of military service between May 15, 1999, and December 21, 2000, in crediting annual leave.

c. **We have been instructed to start accepting claims and forward them to DFAS.** Since there are on-going discussions and legal actions concerning *Butterbaugh v. DOJ*, the MD HRO will accept claims for forwarding to DFAS encompassing the time-period six years prior to July 24, 2003 (the effective date of the *Butterbaugh* decision). **Therefore you may submit claims for annual leave restoration for military leave used on non-workdays for the period July 24, 1997** (six years prior to the *Butterbaugh* decision) **to December 21, 2000** (the date of the change in military leave law). However, due to on-going discussions and litigation over *Butterbaugh v. DOJ* as a result of the Barring Act restrictions, **DFAS will hold and not process these claims until a final resolution is reached and correct claim effective dates are established.** In other words, the final ruling may specify that the Barring Act applies and you may not be able to claim annual leave reimbursement in excess of six years from the date the claim is filed with DFAS.

d. As in all leave claims, the burden of proof is on the employee and it is not incumbent upon the Agency to research, collect, and provide employees with this proof. **An employee making a claim must submit their claim in writing to the HRO using the attached claim form and also attach a copy of the employee's certified military orders, military pay records, or military leave and earnings statement (Military LES), and certification of military leave use, i.e. civilian leave and earnings statement (Civilian LES) or Technician Time and Attendance Records indicating that he or she engaged in one or more periods of active military duty that included non-workdays during the applicable claims period described in the preceding paragraph.** Employees will be credited for 1 day of annual leave for each non-workday occurring within a period of active duty for which he or she was charged military leave. **A maximum of 4 days (32 hours) of annual leave may be credited for each fiscal year.**

e. **Current, retired or separated employees may submit a claim.** **For Current Employees** – Any annual leave credited as a result of an employee's claim must be placed in a restored leave account in accordance with 5 U.S.C. 6304(d)(1)(a) and OPM regulations at 5 CFR 630.306. **The employee must use the restored leave by the end of the leave year in progress, 2 years after the date of restoration.** For example, employees who receive annual leave credit in leave year 2005, the time limit for using the re-credited leave will be the end of leave year 2007. **Employees Who Have Retired or Separated** – May file a claim with their former agency and will only receive a lump-sum payment for any annual leave re-credited as a result of that claim, paid at the rate of pay the employee was earning at the time of his or her retirement or separation.

2. Maryland Army and Air National Guard current and former technicians (including mobilized individuals) who qualify should use the enclosed application to process annual leave (for military leave used during non-workdays) restoration claims. Fill out the enclosed application and attach documented proof in accordance with paragraph 1(d) above. Sign and date the completed application and mail or FAX to:

**Maryland National Guard HRO  
Fifth Regiment Armory  
29<sup>th</sup> Division Street  
Baltimore, MD 21201-2288**


**ATTN: Employee Relations Section  
Administrative Leave Restoration Claim**

**FAX: (410) 576-6176**

3. This memorandum is posted on the MD HRO intranet websites for Army - <https://55.25.254.243/hrowebsite/index.htm> and Air - <http://www.warfield/hro/index.htm>. Management officials are encouraged to promote several postings of this memo on unit and facility websites and newsletters to help capture retirees that may be entitled to compensation. The widest possible dissemination of this information is encouraged. The point of contact for leave restoration claims covered by this memorandum is CW2 Carrie McFaul, HRO Employee Relations Specialist at Commercial: (410) 576-6048; DSN: 496-6048; FAX: x6176; E-mail: [carrie.mcfaul@mdbalt.ang.af.mil](mailto:carrie.mcfaul@mdbalt.ang.af.mil) or SFC Anne Trainer at x6046; [anne.trainer@mdbalt.ang.af.mil](mailto:anne.trainer@mdbalt.ang.af.mil).

FOR THE ADJUTANT GENERAL:

Encl  
Administrative Leave Restoration Claim

  
ANNETTE M. DEENER  
COL, GS, MDARNG  
Human Resources Officer

DISTRIBUTION:  
All Management Officials  
All MD Current and Former Technicians  
Via widest distribution on Email and Web

**POST ON BULLETIN BOARD**

**To:**  
**Maryland National Guard HRO**  
**Fifth Regiment Armory**  
**29<sup>th</sup> Division Street**  
**Baltimore, MD 21201-2288**

**ATTN: Employee Relations Section**  
**Administrative Leave Restoration Claim**

**From:** (Please print or type clearly all required information, sign/date the application and attach documentation)

Name (Last, First, MI) \_\_\_\_\_ SSN \_\_\_\_\_  
Branch (ARNG or ANG) \_\_\_\_\_ Status (Current, Retired, or Separated) \_\_\_\_\_  
Address/City/Zip \_\_\_\_\_  
Phone (Home, Wk, Cell) \_\_\_\_\_  
E-Mail Address \_\_\_\_\_

**Subject: Annual Leave Restoration Claim, Re: Butterbaugh v. DOJ Decision**

This is a claim for annual leave restoration based on the decision rendered in Butterbaugh v. DOJ. This claim complies with the guidance issued by the Maryland National Guard Human Resources Office which implemented the instructions contained in the OPM letter CPM 2004-19, Subject: Administrative Claims for Annual Leave as a Result of Decision in Butterbaugh v. Department of Justice, dated October 13, 2004, and the NGB-J1-TN Memorandum, TN 05-17, Subject: Administrative Claims for Annual Leave as a Result of Decision in Butterbaugh v. Department of Justice, dated 11 March 2005.

My claim is for the following dates, during which I was charged Military Leave during non-workdays:

<b>Period of Military Duty:</b> [Format yymmdd – yymmdd i.e.- 990326 – 990412]	<b>Dates of Non-workdays for Which Military Leave was Used During the Stated Period:</b> [Format: yymmdd / yymmdd / yymmdd i.e.- 990328 / 990403 / 990404 / 990410]	<b># Days Claimed</b> (Maximum 4 Days per Fiscal Year)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I have attached the required documentation to support my claim:

1. Copy of certified military orders, military pay records, or Military LES.

2. Copy of Civilian LES or Technician Payroll Time and Attendance Record for the period of military duty indicating military leave used.

By signing and submitting this claim I declare, under penalty of perjury, that this is a truthful and accurate representation of my claim and that the attached document/s is/are exact, correct and complete copy/s of the original document/s in my possession.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**This Section for HRO Use Only:**

**Date Received** \_\_\_\_\_

**HRO Review By** \_\_\_\_\_

**Date Forwarded to DFAS** \_\_\_\_\_